

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

Criminal No. 12-0107  
ELECTRONICALLY FILED

v.

EARL D. WARNER,

Defendant.

**Order on Government's Request for an Order on Discovery**

In its Proposed Order, the Government seeks that Defendant, in accordance with Rule 16 of the Federal Rules of Criminal Procedure, provide: (1) documents and objects within Defendant's possession, custody or control which he intends to use in his case-in-chief at trial, in accordance with Rule 16(b)(A); (2) reports of examinations and tests within Defendant's possession, custody and control and which he intends to use in his case-in-chief at trial, or intends to call the witness who prepared the report, and the report relates to the witness's testimony, in accordance with Rule 16(b)(B); and, (3) a written summary of any expert witness testimony that the Defendant intends to use at trial in accordance with Rule 16(b)(C).

Although the procedural posture of this "request" is somewhat unique, the Court will construe the above request as a "motion"/with proposed Order (doc. no. 59) under Federal Rule of Criminal Procedure 47.

However, as Defendant emphasizes, and this Court is constrained to agree, the "triggering" mechanisms for all of the above "requests" for reciprocal discovery have not *yet* occurred. Defendant appears to be aware (see doc. no. 60 at fn. 1) and is reminded of his obligation to provide reciprocal discovery under Federal Rule of Criminal Procedure 16. It is

simply premature to so require production thereof, primarily because (for example with regard to Rule 16(b)(1)(C)), Defendant has not yet “asked for disclosure under (a)(1)(G).” Once the triggering mechanisms occur, Defendant shall properly comply with his duty to disclose under Rule 16(b)(1). The Government’s Motion/Proposed Order (doc. no. 59) therefore is denied as PREMATURE; but Defendant is reminded of his obligation to timely provide reciprocal discovery under Rule 16(b).

**SO ORDERED** this 19th day of November, 2013.

s/Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc: All Registered ECF Counsel and Parties